

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LEVOHN H. BROWN,

Petitioner,

v.

CAUSE NO. 1:21-CV-201-HAB-SLC

WARDEN,

Respondent.

OPINION AND ORDER

Levoohn H. Brown, by counsel, filed a habeas corpus petition to challenge his conviction for murder under Case No. 35C01-2-CF-8. Following a trial, on July 15, 2002, the Huntington Circuit Court sentenced him to life imprisonment without possibility of parole. Pursuant to Section 2254 Habeas Corpus Rule 4, the court must dismiss the petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

Brown argues that he is entitled to habeas relief because trial counsel provided ineffective assistance by failing to argue mitigating factors at sentencing. The statute of limitations for habeas petitions states as follows:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d).

Review of the petition indicates that the date on which the judgment became final is the applicable starting point for calculating timeliness. According to the petition, the Indiana Supreme Court affirmed Brown's sentence on direct review on December 10, 2003. Therefore, his conviction became final for purposes of 28 U.S.C. § 2244(d)(1)(A) when the time for petitioning the Supreme Court of the United States for a writ of certiorari expired on March 9, 2004. *See* U.S. Sup. Ct. R. 13(1) (petition for writs of certiorari must filed within 90 days after entry of judgment); *Jimenez v. Quarterman*, 555 U.S. 113, 119 (2009) (when a state prisoner does not petition the Supreme Court of the United States on direct appeal, his conviction becomes final when the time for filing a petition expires). Two hundred thirty days later, on October 25, 2004, Brown initiated post-conviction proceedings but dismissed these proceedings without prejudice on

March 11, 2008. The federal limitations period expired one hundred thirty-five days later on July 24, 2008. Brown did not file the petition in this habeas case until May 19, 2021. Though Brown initiated additional efforts to obtain post-conviction relief in 2017, these efforts did not restart the federal limitations period, nor did they “open a new window for federal collateral review.” *De Jesus v. Acevedo*, 567 F.3d 941, 943 (7th Cir. 2009). Because Brown filed the petition nearly thirteen years too late, the court denies the petition as untimely.

Pursuant to Section 2254 Habeas Corpus Rule 11, the court must consider whether to grant or deny a certificate of appealability. To obtain a certificate of appealability when a petition is dismissed on procedural grounds, the petitioner must show that reasonable jurists would find it debatable (1) whether the court was correct in its procedural ruling and (2) whether the petition states a valid claim for denial of a constitutional right. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Here, there is no basis for finding that reasonable jurists would debate the correctness of this procedural ruling or for encouraging Brown to proceed further, and a certificate of appealability is denied.

For these reasons, the court:

- (1) DISMISSES the habeas petition (ECF 1) because it is untimely;
- (2) DENIES Levoyn H. Brown a certificate of appealability pursuant to Section 2254 Habeas Corpus Rule 11; and
- (3) DIRECTS the clerk to close this case.

SO ORDERED on May 21, 2021.

s/ Holly A. Brady
JUDGE HOLLY A. BRADY
UNITED STATES DISTRICT COURT